IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1710 OF 2004

Ankush Bhagwan Bhosale ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr. Amit Sale, for the Applicant.

Mr. S.R. Shinde, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

28th October 2004

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Shinde, A.P.P., waives notice for the Respondent. As short question is involved, petition taken up for final disposal forthwith by consent.

. The Applicant had filed application for return of the property before the Judicial Magistrate, First Class, Sangola, being Exhibit 1 in Criminal M.A. No. 209 of 2003. That

application came to be dismissed by decision dated 17th November 2002 against which the Applicant carried the matter in revision before the Additional Sessions Judge, Pandharpur, being Criminal Revision Application No. 124 of 2003, which, in turn, was dismissed on 19th June 2004.

. The limited controversy that needs to be examined in the present proceedings is that the offence in respect of which the property has been seized is punishable under section 5 of the Explosive Substances Act. It is not in dispute that the said offence is exclusively triable by the Sessions Court. If it is so, the application for return of property could be and ought to have been maintained before the Sessions Court, which in turn could have decided the same on its own merits in accordance with law. In the circumstances, without examining any other contention, the orders passed by the Courts below are set aside and while dismissing the original application preferred by the Petitioner before the Judicial Magistrate, the Petitioner is given liberty to prefer appropriate application before the Sessions Court, who, in turn, will decide the same on its own merits in accordance with law

uninfluenced by any of the observations made in the impugned orders, which are set aside by this order. Application disposed of on the above terms.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)